IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.08.2006

Coram:

The Honourable Mr. Justice P. SATHASIVAM
&
The Honourable Mr. Justice V. DHANAPALAN

W.A. No. 604 of 2000
against
W.P. No.235 of 1998

N. Jeisi Deisi .. Appellant

Vs.

1. The State of Tamil Nadu
represented by its Secretary to Government
Education Department
Fort St. George, Chennai - 9

2. The Director of Elementary Education
College Road, Chennai - 6

3. The District Elementary Educational Officer
College Road, Chennai - 6

4. The Assistant Elementary Educational Officer
Periamet Range, Chennai - 1

5. The Correspondent
C.S.I. Middle School
16, General Muthaiah Street
Chennai - 600 079 .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 23.02.2000 passed in W.P. No.235 of 1998.

For appellant Mr. C. Selvaraju, Senior Counsel
for Mr. G. Jeremiah

For RR 1 to 4 Mr. M. Sekar
Special Government Pleader (Edn.)

No Appearance for R.5.

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JUDGMENT

(Judgment of the Court was delivered by V. DHANAPALAN, J.)

This appeal is directed against the order of a learned Single Judge in W.P. No.235 of 1998 on 23.02.2000 and the prayer in the said W.P. is for issuance of a writ of certiorarified mandamus calling for the records of the third respondent in Na.Ka.No.5155/A4/97 dated 12.11.1997 and quash the same and direct the respondents 1 to 4 to approve the petitioner's appointment as a Secondary Grade teacher in the fifth respondent school.

2. The case of the appellant is that after passing Higher Secondary Course Certificate, she had joined Teacher Training Course at Children's Garten School, Mylapore, a recognised Teachers Training Institute and wrote the examination conducted by the Director of Government Examinations in 1989 and the said authority issued "Teachers Training Certificate Secondary Grade" which also mentioned that she had appeared for the Kindergarten examination.

3. After serving in a school on a temporary basis, both in leave vacancy and also in secondary grade leave vacancy, she was appointed on 18.06.1997 in a permanent vacancy in the fifth respondent school. The fifth respondent school submitted a proposal for the approval of the appointment from the third respondent i.e. The District Elementary Education Officer. But, the fourth respondent, i.e. The Assistant Elementary Education Officer has returned the Service Register of the appellant on the ground that she had passed only Kinder Garten Teachers Training Course and hence, she is not qualified. In such a situation, the appellant moved this Court and this Court directed the petitioner to file an appeal under Section 41 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (hereinafter referred to as "the Act"). The third respondent rejected the appeal and the appellant had filed W.P. No. 235 of 1998 against which the present appeal has been preferred.

4. According to the appellant, the certificate issued by the first respondent clearly mentions "Teachers Certificate Secondary Grade" and therefore, it is not open to the third respondent to contend that her certificate is not equivalent to the Secondary Grade Teachers Certificate and as such, the order of the third respondent had been passed in violation of principles of natural justice and it is an arbitrary exercise of powers vested upon the third respondent. It is the further case of the appellant that the certificate possessed by her had been misconstrued as TSLC of the Secondary Grade or its equivalent and the certificate should have been treated as equivalent to that of the Secondary Grade certificate and hence, the certificate issued is a valid one and the respondents are estopped from contending that the Teachers Training Certificate possessed by her is not equivalent to that of a Secondary Grade Certificate. The further case of the appellant is that the first respondent has since abolished the post of Elementary Grade teachers and in that context, conducted a short-term course SCERT and upgraded all the elementary

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teachers as Secondary Grade teachers.

5. It was also pointed out by the appellant that the respondents, having issued a valid certificate, cannot now invalidate the same and cannot contend that it is of no value for the purpose of employment. In the G.O. Ms. No.1251 Education Department dated 14.12.1992, which has since been modified by subsequent letter dated 13.05.1993, directed that Pre School Teachers Training Course holders are eligible to hold the post of Secondary Grade teachers in Government Schools and local bodies and when the appellant possesses the same qualification, she has to be considered for the same and she cannot be singled out and treated differently merely because she is appointed to a private school and the refusal to approve her appointment is arbitrary and violative of Article 14 of the Constitution of India and discriminatory in nature.

6. On the other hand, on behalf of the respondents 1 to 4, the Additional Secretary to Government, School Education Department, filed counter affidavit contending that the appellant was appointed as Secondary Grade Assistant in the fifth respondent school on 18.06.1997 and in terms of the Act and Annexure V of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, (hereinafter referred to as "the Rules"), the qualification prescribed is as follows:

Secondary Grade Teacher	1. S.S.L.C. 2. T.S.L.C. of Secondary Grade or its equivalent
Elementary Grade Teacher	E.S.L.C. or its equivalent and Trained Teachers Certificate of Elementary Grade or its equivalent Teachers who have passed the Nursery, Montessori and Kinder Garten School Leaving Certificate Examination of Secondary Grade shall be employed to handle Standards I and II only

7. By citing the above provisions, it was contended by the respondents that the appellant had possessed the only the following qualifications, namely, Secondary School Leaving Certificate and Higher Secondary School Leaving Teachers Certificate (Kinder Garten Training School Leaving Certificate Examination) and the certificate possessed by the appellant is equivalent only to that of an elementary school teacher and as the appellant does not possess the requisite qualification, in terms of Rule 15(6), her appointment was not approved and the refusal to approve has also been confirmed in appeal.

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8. The respondents further contended that after amendment of the Rules on 20.03.1978, the teachers who had passed the Nursery, Montessori and Kinder Garten School Leaving Certificate Examination cannot be appointed in the sanctioned post of Secondary Grade Teacher and hence, the appellant is not qualified to hold the post of Secondary Grade Teacher and accordingly, her appointment cannot be approved.

9. The learned Judge, on considering the submissions made by the learned counsel on either side, has opined in paragraph 42 of his judgment which is extracted as under:

> "It is not as if the petitioner's appointment is protected by the saving provision in the rule. Concedingly, the petitioner had been appointed after the coming into force of the rules framed under the Tamil Nadu Private Schools Regulation Rules and that too, after the amendment and hence, it is clear that the petitioner do not possess the qualifications prescribed for the post. It may be that such a view may work hardship to the petitioner, but there is no escape at all. The stand taken by the respondents 1 to 4 deserves acceptance."

Aggrieved by the above order of the learned single Judge, the appellant has preferred the present appeal.

10. Heard Mr. C. Selvaraju learned Senior Counsel appearing for Mr. G. Jeremiah, learned counsel for the appellant and Mr. M. Sekar, learned Special Government Pleader appearing for the respondents 1 to 4.

11. Mr. Selvaraju, learned Senior Counsel for the appellant, while assailing the order of the learned single Judge, has contended that the point for consideration before this Court is whether the Tamil Nadu Minority Schools (Recognition of Payment of Grant) Rules, 1979 is a rule framed under the Act or is an executive instruction. He has pointed out that after passing of Act, the field of education regarding private schools has been occupied by legislation and the executive instruction has no power and therefore, the Tamil Nadu Minority Schools (Recognition and payment of grant) Rules, 1979 is not an executive instruction.

12. According to the learned Senior Counsel, the Rules were framed after a judgment in W.P. No.295 of 1975 dated 27.01.1975 wherein a Division Bench of this Court has struck down several provisions of the Act as not applicable to minority institution and thereafter, special rules were framed to regulate minority institutions. He has pointed out that Section 6 of the Act provides for grant of permission to start schools, Section 11 deals with recognition to schools, Section 14 deals with payment of grant, Section 3 empowers to regulate stages of education and Section 56 empowers the Government to frame rules.

13. The learned Senior Counsel has argued that the finding of the learned single Judge that the minority rules are executive instructions is

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incorrect because the minority rules have been framed only under Section 56 of the Act and when the field of education has been occupied by legislation, no executive instruction can be issued. He has also pointed out that the reasoning given in paragraph 40 the order by the learned single Judge for distinguishing the judgment reported in 1999 (3) CTC 760 (Mrs. Jemima Vs. The State of Tamil Nadu represented by its Secretary, Education Department and 3 others) (hereinafter referred to as "Mrs. Jemima's case) is factually incorrect and in that case, the petitioner was appointed on 05.09.1979 after passing of G.O. Ms. No.564, Education dated 20.03.1978 and the finding of the learned single Judge that the appointment was prior to G.O. Ms. No.564 is factually incorrect. In fact, the appellant was appointed as Secondary Grade teacher on 02.06.1997 i.e. after passing of the Government Order and continues in the post. Therefore, the case of the appellant herein and Mrs. Jemima's case are identical.

14. Per contra, Mr. M. Sekar, learned Special Government Pleader (Education) has contended that the approval sought is under the Act and the Rules framed thereunder and this being a statutory rule, unless and until the appellant satisfies the required qualifications, her appointment cannot be approved. Rebutting the argument of the learned Senior Counsel for the appellant, the learned Special Government Pleader has pointed out that the approval is not under the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977, which enables the minority schools for being assessed to grant. However, he has admitted that in the Minority Schools (Recognition and Payment of Grant) Rules, 1977, the provision continued without amendment but that would not enable the appellant to claim approval of appointment or approval being granted after amendment of the Rules.

15. The learned Special Government Pleader has strenuously contended that the scope of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977, is for assessing the grant only and merely because the appellant possesses the qualification prescribed in the said Rules, she will not be entitled for appointment or approval for her appointment as she does not possess the requisite qualifications prescribed under the Act and the Rules framed thereunder which will prevail over the rules of Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules and the Government Order enables only those teachers who have already been appointed to be continued and their being assessed for payment of grant.

16. It is seen from the findings of the learned single Judge that Rule 15 provides for qualifications, conditions of service of teachers and other persons as well as for promotion. Annexure I to Rule 11(3) read with Annexure I provides for payment of grants from State funds towards Staff Grant, Maintenance Grant, etc. Further, Rule 19 read with Annexure III prescribes the procedure for payment of pay and allowance to teachers and other persons employed in private schools. Annexure V prescribes the qualifications for appointment as teachers in private schools. In the present case, we are concerned with the post of Secondary Grade teacher.

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17. Now, the point which arises for consideration is whether the appellant is qualified in accordance with law with reference to her date of appointment after the passing of G.O. Ms. No.564 Education Department dated 20.03.1978. In this case, the appellant was appointed as Secondary Grade teacher on 02.06.1997 and it has to be decided whether her appointment is valid and she is entitled to have approval of her appointment.

18. Since the learned single Judge has distinguished the judgment in Mrs. Jemima's case, it would be proper for us to go into the relevant portion of the same which is relevant for our consideration.

> "9. That apart, assuming that the Government as a policy decision decided to abolish the Higher Grade Teachers with an avowed object to improve the standard of education and to enable the teachers to improve their qualifications suitably as mentioned above, unless and until the qualifications prescribed under clause 3 of Annexure III to the Minority Schools (Recognition & Payment of Grant) Rules read with 8 of the said rules are suitably amended by the Government. I am of considered opinion, the petitioner, who is having the necessary qualification for the post of Secondary Grade Teachers and having been appointed as Secondary Grade Teacher in the fourth respondent minority school, she cannot be deprived of her salary payable to the Secondary Grade teachers merely because she has not completed her in-service training and she is entitled to the salary payable to the Secondary Grade teachers continuously until the suitable amendments are made in the qualifications prescribed for the Secondary Grade Teachers under the Rules.
>
> 10. For the reasons stated above, while upholding the G.O. Ms. No.564, Education dated 20.03.1978, I am obliged to hold that the said G.O. Ms. No.564, Education, dated 20.03.1978 is not applicable to the minority institutions unless and until suitable amendments are made to Clause 3 of Annexure III to the Minority Schools (Recognition & Payment of Grant) Rules read with Rule 68 thereof and the respondents are, therefore directed to continue to pay to the petitioner the salary payable to the Secondary Grade teachers until necessary amendments are made to the Rules as stated above. The respondents are further directed to pay the entire arrears of salary, at the scale of pay applicable to the Secondary Grade teachers, payable to the petitioner with effect from 01.07.1986. The respondents shall pay the entire arrears of such salary within three months from the date of receipt of copy of this order and shall continue to pay to the petitioner salary as that of the Secondary Grade teacher until

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suitable amendments are made in the Rules as stated above."

19. From a reading of the above decision, it is made clear that unless and until the Rules are amended, a person who has been appointed and who possesses the requisite qualification has to be continued to be paid his regular benefits.

20. Further, the finding of P.D. Dinakaran, J. in Mrs. Jemima's case, that qualification as found in the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules will be sufficient for all purposes and that a teacher appointed should possess the qualifications as prescribed in the Grant Rules will be extended to equal wages as per the rules, in our view, holds good, to the case on hand. Moreover, for a person employed in a minority institution, Annexure III read with Rule 8 of the Minority Schools (Recognition and Payment of Grant) Rules is applicable to him. This view of P.D. Dinakaran, J. has not been accepted by the learned single Judge whereas the position of the Rules as well as the facts of Mrs. Jemima's case are identical to the facts of the case on hand. As such, we endorse the view of P.D. Dinakaran,J. and we find no reason to distinguish Mrs. Jemima's case with the present one and we differ from the view of the learned single Judge that P.D. Dinakaran J. has not considered the scope of the statutory rule as against an administrative order. In our view, the Rules relied on by the appellant cannot be construed as an executive instruction.

In view of the foregoing, in our considered opinion, since the appellant has possessed the requisite qualification prescribed in Rule 15 (6) and Annexure V to the Rules and taking into account the effect of the commencement of the rules in force, the order of the learned single Judge is a misconstrued one and as such, it is liable to be set aside. Accordingly, it is set aside and the appeal stands allowed. No costs. Consequently, connected C.M.P. Nos.5193 and 5194 of 2000 are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Secretary to Government
   Government of Tamil Nadu
   Education Department, Fort St. George, Chennai - 9

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   College Road, Chennai - 6

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   College Road, Chennai - 6

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   Periamet Range, Chennai - 1

+ 1 CC To Mr. G.Jeremiah, Advocate SR NO. 34935

+ 1 CC to the Government Pleader SR NO 34917

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